Supreme Court, U.S.
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No. 94-1132

In The

Supreme Court of the United States

October Term, 1994

ROBERT J. CIAFFONNI,

Petitioner,

vs.

ELIZABETH C. COWDEN,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioner in attempting to obtain review of a state supreme court judgment refusing to entertain a collateral attack on a final judgment in a will contest has articulated any valid basis under 28 U.S.C. § 1257 for this Court to exercise jurisdiction over this matter?

2. Whether Petitioner has articulated any special or important reason why this Court ought to grant the Petition for Writ of Certiorari in this matter?

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TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION

Respondent, Estate of Ciaffonni, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the decision of the Pennsylvania Supreme Court entered on August 18, 1994.

OPINIONS AND JUDGMENTS BELOW

1. *In Re Estate of Ciaffoni*, Court of Common Pleas of Washington County, No. 63-74-942, dated January 12, 1993, Order denying Robert J. Ciaffoni's third motion for new trial.

2. *In Re Estate of Ciaffoni*, Superior Court of Pennsylvania, at No. 278 Pittsburgh 1993, dated December 1, 1993, Order quashing Robert J. Ciaffoni's appeal.

3. *In Re Estate of Ciaffoni*, Superior Court of Pennsylvania, at No. 278 Pittsburgh 1993, dated January 28, 1994, Order denying reargument to Robert J. Ciaffoni.

4. *In Re Estate of Ciaffoni*, Supreme Court of Pennsylvania, at No. 98 W.D. Allocatur Docket 1994, dated June 7, 1994, Order denying Robert J. Ciaffoni's Petition for Allowance of Appeal.

5. *In Re Estate of Ciaffoni*, Supreme Court of Pennsylvania, at No. 98 W.D. Allocatur Docket 1994, dated August 18, 1994, Order denying Robert J. Ciaffoni's Application for Reconsideration of 7 June 1994 Order.

STATEMENT OF THE CASE

Petitioner seeks review of the Judgment of the Supreme Court of Pennsylvania denying review of an Order of the Superior Court of Pennsylvania quashing an appeal from an Order of the Court of Common Pleas of Washington County, dated January 12, 1993, denying Petitioner's third motion for post-trial relief. Petitioner is attempting to relitigate matters that have been finally litigated, and further is abusing the processes of the court in a self-indulgent exercise in futility.

On September 23, 1974, Paul Ciaffoni died, survived by his wife, Concetta, and seven children. Paul Ciaffoni's will was admitted to probate by the Register of Wills of Washington County on December 16, 1974. Thereafter, a will contest commenced that has now spanned twenty-one (21) years.

The will contest was first tried in the Orphans' Court of Washington County in September 1978. The will was upheld by the Orphans' Court and the contestants appealed directly to the Pennsylvania Supreme Court on the ground that certain evidence had been improperly excluded at trial.

Initially, the Pennsylvania Supreme Court affirmed the decision of the trial court. *In re Estate of Ciaffoni*, 491 Pa. 46, 417 A.2d 1136 (1980). Subsequently, reargument was granted and the Order of the trial court was vacated and the case remanded for a new trial at which the contestants could introduce the evidence that had been excluded at the first trial. *In re Estate of Ciaffoni*, 498 Pa. 267, 446 A.2d 225 (1982).

On remand, the Honorable Edmund S. Pawelec was specially appointed to preside over the retrial of the case. The matter was retried in June and July, 1983. On June 22, 1987, Judge Pawelec issued an opinion upholding the validity of the will, and a decree dismissing the contestant's appeals. (A 2).

Thereafter, exceptions were taken to the decree and opinion of Judge Pawelec. This was Robert J. Ciaffoni's first motion for post-trial relief. A court *en banc* was convened to consider the exceptions. After full briefing and argument, an Order was issued on February 16, 1988 denying the exceptions.

On April 13, 1989, again after full briefing and argument, the Superior Court issued a Memorandum Opinion and Order affirming the order of the *en banc* court and adopting the opinion of the trial court. *Appeal of Robert J. Ciaffoni*, Superior Court of Pennsylvania, No. 393 Pittsburgh,

1988. The Superior Court specifically stated in its Memorandum Opinion:

> We have thoroughly reviewed the record, briefs, applicable case law, the trial court's fifty-four page opinion in this case, and the order of the court *en banc* and find no merit to the issues raised on appeal. We find, in agreement with the court *en banc*, that the trial court thoughtfully and comprehensively analyzed the testimony and issues and properly applied the relevant law. Moreover, we find that the trial court addressed the discernable thrust of the contentions that appellant raises in the instant appeal and arrived at the proper conclusion regarding each issue.

Appeal of Robert J. Ciaffoni, *id.* at 6-7.

On or about July 10, 1989, Robert J. Ciaffoni filed a Petition for Allowance of Appeal in the Supreme Court of Pennsylvania seeking review of the Memorandum Opinion and Order of April 13, 1989. On December 28, 1989, the Supreme Court of Pennsylvania entered a *per curiam* Order denying the Petition for Allowance of Appeal.

On or about September 3, 1990, Robert J. Ciaffoni filed a document captioned as a Motion for New Trial *Nunc Pro Tunc*. Robert J. Ciaffoni's Motion for New Trial, *Nunc Pro Tunc*, which was his second request for post-trial relief from the opinion and decree of Judge Pawelec of June 22, 1987, consisted of mostly a regurgitation of the arguments that had previously been rejected by the Pennsylvania appellate courts, as well as a collection of unsubstantiated assertions of

conspiracy by various persons against Robert J. Ciaffoni. On September 6, 1990, counsel for the Estate filed and served an Application to Quash, or in the Alternative to Deny, Pro Se Motion for New Trial *Nunc Pro Tunc*.

On or about November 18, 1992, Robert J. Ciaffoni filed a document captioned Second Motion for New Trial, *Nunc Pro Tunc*, in fact, Robert J. Ciaffoni's third motion for post-trial relief. The essence of Robert J. Ciaffoni's Second Motion for New Trial *Nunc Pro Tunc* is a rehash and regurgitation of Robert J. Ciaffoni's theories of "comparative stylistics" and "gramformprints." On December 9, 1992, the estate, through counsel, filed an Application to Quash, or in the Alternative Deny, Second Motion for New Trial, *Nunc Pro Tunc*.

On January 12, 1993, the trial court, per Judge Pawelec, issued a decree dismissing Robert J. Ciaffoni's Second Motion for New Trial, *Nunc Pro Tunc*, stating:

> A review of this petition makes clear that this is simply an attempt to revisit and relitigate the issues that were previously determined, after extensive hearings, by this court in a Decree and opinion dated June 22, 1987. This Decree was affirmed by a court *en banc*, and by the Superior Court of Pennsylvania. The Supreme Court of Pennsylvania denied allocatur.

See, Decree dated January 12, 1993. (B 1).

On February 3, 1993, Petitioner appealed to the Superior Court of Pennsylvania. On March 3, 1993, Respondent filed a Motion to Quash the Appeal. On December 1, 1994, the

Superior Court issued a *per curiam* Order granting Respondent's motion to quash. (B 2). The Superior Court denied reconsideration of that Order on January 28, 1994.

A Petition for Allowance of Appeal was filed in the Supreme Court of Pennsylvania on February 16, 1994. By Order dated June 7, 1994, the Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal. (H 18). By Order, dated August 18, 1994, the Supreme Court denied reconsideration of its Order denying the Petition for Allowance of Appeal. (B 3).

SUMMARY OF THE ARGUMENT

Petitioner has failed to articulate any reason why this Court ought to exercise its jurisdiction in this matter.

REASONS FOR DENYING WRIT

Petitioner fails to cite the correct statute for invocation of this Court's jurisdiction. Whereas petitioner cites 28 U.S.C. § 1254 governing appeals from Courts of Appeals, the actual jurisdictional prerequisite is 28 U.S.C. § 1257 governing appeals from state courts. The error is significant inasmuch as the grounds for review of a state court decision are substantially more circumscribed than the grounds for review of a decision of a court of appeals. Petitioner has failed to articulate any valid basis for this Court to exercise jurisdiction under 28 U.S.C. § 1257. Rather, Petitioner highlights the fact that he is simply continuing to collaterally attack a final judgment.

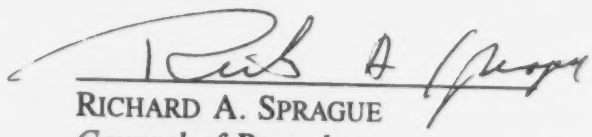
Petitioner also fails to cite any reason why this Court ought to grant the petition for writ of certiorari under SUP. CT. R. 10.1. Petitioner's rote recitation of a due process violation is without substance and serves only as a mechanical

phrase devoid of substance or meaning. Again, Petitioner's focus is on the factual dispute which has been fully and finally decided adversely to Petitioner, and not on the issue before this Court -- whether there is any basis for this Court to review an Order of a state supreme court refusing to entertain a collateral attack on a final judgment.

CONCLUSION

For the reasons stated herein, it is respectfully requested that this Honorable Court enter an Order denying the Petition for Writ of Certiorari.

Respectfully submitted,



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